IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

Writ Appeals No.1541 of 2006 & 1151 of 2007
AND
WAMP.Nos.1 and 2 of 2006 in WA.No.1541 of 2006

1.The Vice Chancellor,
Chairman-Selection Committee,
Tamil Nadu Veterinary and Animal
Sciences University,
Vepery, Chennai-7.

2.The Registrar,
Tamil Nadu Veterinary and
Animal Sciences University,
Vepery, .. Appellants in W.A.No.1541/2006
Chennai-7. & Respondents 2 and 3 in
W.A.No.1151/2007

Vs.

1.Dr.G.Jeyasekaran .. 1st respondent in both the W.As.
2.Dr.C.B.T.Rajagopalasamy .. 2nd respondent in WA.1541/2006
& Appellant in WA.1151/2007

Writ Appeals both preferred under Clause 15 of the Letters Patent as against the order passed by the learned single Judge of this Court in W.P.No.12276 of 1997, dated 31.8.2006.

W.P.No.12276/97 : Petition presented under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus calling for the records of the 2nd Respondent herein in his proceedings U.S.NO.60108/RIII/97 dated 6.8.1997 and quash the same and further direct the respondents 1 and 2 herein to appoint the petitioner herein to the post of Associate Professor in the field of "Fish Processing Technology"

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For appellants in WA.1541/2006, who are R2 & R3 in WA.1151/2007 :	:	Mr.Masilamani, S.C. for Mr.S.Vijayakumar,
For R.1 in both the W.As.	:	Mr.C.Selvaraj, S.C. for M/s.S.Mani
For R.2 in WA.1541/2006, who is the appellant in W.A.1151/2007	:	Mr.C.K.Chandrasekkar for M/s.Row & Reddy

COMMON JUDGMENT

ELIPE DHARMA RAO, J.

Both these Writ Appeals are directed against the order passed by the learned single Judge of this Court in W.P.No.12276 of 1997, dated 31.8.2006. For the sake of convenience and for easy reference, the parties are referred to as per their ranking in the writ petition.

2. The Tamil Nadu Veterinary and Animal Sciences University, Madras, had issued Advertisement No.1/96, dated 4.6.1996 in 'Daily Thanthi' Tamil newspaper, calling for applications for various posts in the University. In the said advertisement, they have called for applications for one post of Associate Professor in Fish Processing Technology in the Fisheries Faculty in the pay scale of Rs.3700-125-4950-150-5700. It is a Group-A Post and the recruitment is by open category. As per the said advertisement, the qualification for the post of Associate Professor, as prescribed in the Tamil Nadu Veterinary and Animal Sciences University Regulations, is Ph.D. Degree with five years of experience in teaching/research in the concerned subject. It has also been mentioned that 'for University Training and Research Centres/Research Farms, persons with basic degree of B.V.Sc. with Masters and Doctorate degrees in any branch of Veterinary and Animal Sciences including Basic Sciences can apply.'

3. Dr.G.Jeyasekaran/the writ petitioner was the Assistant Professor in the Department of Fish Processing Technology, Fisheries College and Research Institute, Tuticorin. He did his Masters Degree in M.F.Sc. and also did Ph.D in Fisheries Microbiology under Fish Processing Technology Department. Dr.C.B.T.Rajagopalasamy/the third respondent was the Assistant Professor in the Department of Fisheries Biology and Capture Fisheries, Fisheries College and Research Institute, Tuticorin. In response to the said advertisement, both the petitioner and third respondent, including some other candidates have applied and interview was conducted on

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26.6.1997. According to the petitioner, the third respondent was not at all qualified to the post of Associate Professor and only himself and one Velayutham were qualified to hold the said post, but, the University Authorities, without adhering to the rules and regulations, have appointed the third respondent to the post of Associate Professor and appointed the said Velayutham as the Professor without fulfilling the basic qualifications for the post of Professor. Therefore, he challenged the selection of the third respondent to the post of Associate Professor by filing W.P.No.12276 of 1997 and since the learned single Judge of this Court has allowed the said writ petition, while the University preferred W.A.No.1541 of 2006, the third respondent in the writ petition viz. Dr.C.B.T.Rajagopalasamy has preferred WA.1151 of 2007.

4. The writ petitioner has stated in his affidavit filed in the writ petition that after selecting Dr.P.Velayutham to the Post of Professor, he was the only eligible candidate left in the field of Fish Processing Technology and after attending the interview, he submitted a letter enclosing (1) willingness undertaking and (ii) M.F.Sc./Ph.D. Guidance certificate to the Dean, Fisheries College and Research Institute, Tuticorin on 31.7.1997 as per the circular of the University. But, he was not selected, whereas the third respondent was selected. He would further submit that the third respondent did not have the prescribed five years experience in research in the concerned subject viz. 'Fish Processing Technology', rather he put less than three years experience which could be seen from his service records. The third respondent did not also have teaching experience in the concerned subject viz. 'Fish Processing Technology' and no courses were offered by the third respondent in Fish Processing Technology to the students. The third respondent has only M.F.Sc. Degree in Fisheries Science with thesis specialization in Aqua Culture and Ph.D. Degree in Aqua Culture and neither guided any M.F.Sc. Student in the concerned subject of Fish Processing Technology nor undergone any advance training in the concerned subject of Fish Processing Technology'.

5. The petitioner would further submit that he has been working in the Department of Fish Processing Technology ever since his appointment on 26.9.1986, but the third respondent was working in another Department/Subject i.e. Department of Fisheries Biology.

6. It has also been submitted that the Vice-Chancellor of the University, before nominating Dr.R.Santhanam, Professor and Head, Department of Fisheries Environment, as one of the three members in the Selection Committee for conducting the interview for the post of Associate Professor in the field of Fish Processing Technology failed to see that as per Appendix-IA of the Tamil Nadu Veterinary and Animal Sciences University Regulations, such nomination of member should be only from the Head of the Department concerned and

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not from any other Department and therefore, the Vice-Chancellor has simply ignored the University Regulations and nominated such persons on his own choice. The petitioner has stated that in appointing the third respondent, the respondents 1 and 2 had shown favouritism and being the highest authorities in the University, the respondents 1 and 2 cannot be permitted to flout the rules, norms and procedures of the University, by showing nepotism.

7. The second respondent/Registrar of the University has filed a counter affidavit, denying all the allegations of the petitioner and further submitting that the Selection Committee for the post of Associate Professor in the Fisheries Faculty was constituted as per Appendix I(A) of the University Regulations by the Vice-Chancellor and a Screening Committee was also constituted as per the Regulations to scrutinise applications received from the candidates. As per the Screening Committee report, there were only six eligible candidates, who were called to attend the interview for the post of Associate Professor in the field of Fish Processing Technology and out of them, only five candidates attended the interview. The qualification fixed in the Advertisement, particularly the requirement of basic degree B.F.Sc. and Specialisation in the concerned subject were relaxed by the Board by its 26th meeting held on 21.3.1997, after considering the in-service candidates, who were in service as on 3.11.1989. The specialisation in the Post Graduate course was introduced only from the academic year 1991-92 and therefore, taking note of the plight of the staff working in the Fisheries College and Research Institute, the Board relaxed the basic degree/ specialisation requirement. It has also been stated that Dr.P.Velayutham had completed 10 years experience as on 30.6.1986 and since he had applied for the posts of Professor and Associate Professor, the Selection Committee selected Dr.P.Velayutham as Professor in the discipline of Fish Processing Technology. The third respondent completed his PG Degree prior to 1991-92 and had 10 years and 2 months experience, whereas the petitioner had only 7 years and 7 months experience as on 30.6.1996, excluding Ph.D. study period.

8. The second respondent would further submit that the petitioner had specialisation in the field of Industrial Fishery Technology and the 3rd respondent had in the field of Fisheries Science and both of them completed PG course prior to 1991-92. It has also been submitted that the petitioner was awarded the punishment of stoppage of increments for three years without cumulative effect for his unauthorised absence without obtaining proper relief from the University while he was proceeding for Ph.D. Degree and therefore, the Selection Committee found the third respondent as suitable for the post of Associate Professor of the Fish Processing Technology. The specialisation in the Post Graduate level introduced only from the academic year 1991-92 and therefore,

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the petitioner cannot complain that no members from the same discipline nominated in the Selection Committee and Dr.Santhanam is senior most Professor and had experience in the Fisheries field for more than 18 years and therefore, the question of ignoring the University Regulations does not arise; that the Selection Committee consists of six members, who are highly responsible officers of the University and therefore, there is no chance of showing any favouritism to a particular individual. It has also been submitted that the petitioner was appointed as Associate Professor by the Order in U.S.O.No.60132/RIII/01, Roc.No.4755/RIII/2000, dated 13.3.2002.

9. As has already been adverted to supra, the qualification prescribed for the post of Associate Professor in Fish Processing Technology is Ph.D. Degree with five years of experience in teaching/research in the concerned subject. Therefore, the writ petitioner would contend that 'concerned subject' mentioned in the advertisement is Fish Processing Technology and since the third respondent is not qualified in the Fish Processing Technology, the University ought not to have appointed the third respondent.

10. In this backdrop, now, we have to see the comparative table of qualifications of both the petitioner and the third respondent. In para No.8 of the counter affidavit filed by the respondents 1 and 2, the qualifications, experience etc. of the petitioner and the third respondent are furnished as follows:

Dr.G.Jeyasekaran (Petitioner) (Date of Joining: 26.9.19867)			Dr.C.B.T.Rajagopalasamy (3rd respondent) (Date of Joining 28.4.1986)		
Course	Discipline	Year	Course	Discipline	Year
B.F.Sc.	Fisheries Science	1983	B.F.Sc.	Fisheries Science	1982
M.F.Sc.	Industrial Fishery Technology	1985	M.F.Sc.	Fisheries Science	1985
Ph.D.	Fishery Microbiology	1994	Ph.D.	Acquaculture	1996

11. The writ petitioner would also submit a comparative statement thereby submitting that while he had research experience for a period of 10 years and 9 months and Teaching experience for a period of 7 years and 10 months in Fish Processing Technology, the third respondent is having research experience only for a period of three years, that too without any teaching experience. It has also been submitted that while the petitioner submitted three

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international papers and 12 national papers in Fish Processing Technology, the third respondent has submitted only three national papers with nil international papers and that that while the petitioner achieved seven awards/Fellowships, the third respondent had only two awards to his credit.

12. The respondents 1 and 2, in their counter affidavit, submitted that the Board of Management relaxed the basic degree/specialisation requirements during its meeting held on 21.3.1997 and accordingly, the Selection Committee selected the third respondent as Associate Professor.

13. At this juncture, it is apt to quote Regulation No.5(5) of the Tamil Nadu Veterinary and Animal Sciences University Regulations, which reads as follows:

> "Where necessary, the Selection Committee may with the approval of the Board relax the minimum requirements/qualifications in favour of candidates who are otherwise considered as qualified for selection"

14. The learned senior counsel for the writ petitioner would contend that once the selection process commenced, the prescribed qualification cannot be changed. For this purpose, he would rely on a judgment of the Honourable Apex Court in SECRETARY, A.P.PUBLIC SERVICE COMMISSION vs. B.SWAPNA AND OTHERS [(2005) 4 SCC 154], wherein Their Lordships of the Honourable Apex Court have held:

> "Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. Minimum percentage of marks, can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect..."

15. But, this judgment of the Honourable Apex Court is very well distinguishable from the facts of the case on hand. In the case before the Honourable Apex Court, the Public Service Commission Rule, which was prevalent on the date of notification was that the ranking list prepared by the Commission for selection in a direct recruitment shall remain in force for a period of one year from the date on which the selection list is published or till the publication of the new selection list, whichever is earlier and the Commission may select candidates from ranking list in force in place of those who relinquish the selection or who do not join duty. Accordingly, a rank list was prepared and the applicant therein was

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kept in wait list. But, subsequently, the above said Rule was amended mentioning that the list of the candidates approved/selected by the Commission shall be equal to the number of vacancies only and the fallout vacancies, if any due to relinquishment and non-joining etc. of selected candidates shall be notified in the next recruitment. As a result of amendment to the recruitment rules and application of the same to the already commenced recruitment process, the chances of the wait listed candidates to get appointment vanished. Only in such circumstances, the Honourable Apex Court has observed that 'once a process of selection starts, the prescribed selection criteria cannot be changed'. But, in the case on hand, even by the time the notification was issued, the above quoted Regulation No.5(5) of the Tami Nadu Veterinary and Animal Sciences University Regulations was in existence and it was not brought by any amendment, after commencement of the selection process, so as to deprive anybody's chance of appointment.

16. The learned counsel for the third respondent and the University would strenuously argue that in academic matters, the decisions as to the qualifications and eligibility shall be best left with the expert body and the Courts should not interfere in such matters. In support of their arguments, the learned counsel would rely on a judgment of the Honourable Apex Court in V.K.SOOD vs. SECRETARY, CIVIL AVIATION AND OTHERS [1993 Supp. (3) SCC 9]. In this judgment, the appellant therein challenged the qualifications prescribed for the post of Examiner of Personnel in the Department of Civil Aviation as discriminatory and tailor made. He contended that the qualifications contained in 1969 Rules were amended in 1978 with a view to exclude him. Dismissing the said appeal, the Honourable Apex Court has held:

> "It is for the expert body and the Supreme Court does not have the assistance of experts. Moreover, it is for the rule-making authority or for the Legislature to regulate the method of recruitment, prescribe qualifications, etc."

17. Likewise, the learned counsel appearing for the respondents would also rely on another judgment of the Honourable Apex Court in MAHARASHTRA STATE BOARD OF S.H.S.E. vs. PARITOSH BHUPESHKUMAR SHETH [(1984) 4 SCC 27]. In the said judgment, the question canvassed was whether, under law, a candidate has a right to demand inspection, verification and revaluation of answer books and whether the statutory regulations framed by the Maharashtra State Board of Secondary and Higher Secondary Education governing the subject insofar as they categorically state that there shall be no such right, can be said to be ultra vires, unreasonable and void. The High Court of Bombay has held that the Rules of the Board declining such opportunity to the students are ultra vires of the Constitution. In those circumstances, the Honourable Apex Court has held:

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"As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice."

18. The learned counsel for the respondents would cite an unreported judgment of the First Bench of this Court in S.RAJENDRAN vs. STATE OF TAMIL NADU (W.A.No.3439 of 2004, dated 18.2.2005), wherein the First Bench of this Court, relying on the above said two judgments of the Honourable Apex Court, has held in para No.7 as follows:

"While exercising the power of judicial review over a decision of the University in the matter of selection and appointment, the court does not sit as an appellate authority. It is not possible either to direct or advise the expert bodies to deviate from the method evolved inconsistent with the rules or regulations for selection and appointment to a post. As the University or the educational institutions, for that matter, are responsible for their standards, it would be better to leave the discretion to select and appoint the best of the teachers to the University and educational institutions concerned. The court would interfere in such matters only if it is shown that the authorities have exercised their powers in disregard to the minimum qualification prescribed for a post or acted in an arbitrary manner."

19. The Selection Committee for the appointment of the post of Associate Professor consists of the following members:

a) Vice Chancellor : Chairman

b) Two external experts nominated by the Vice-Chancellor among the panel of external experts approved by the

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Board Members : Members

c) Faculty Dean : Member

d) Director concerned : Member

e) Head of the Department concerned : Member

20. Thus, the said Selection Committee is an expert body containing professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. When, undoubtedly, the said Committee is having power to relax the conditions under Regulation 5 (5), in favour of a candidate, who is otherwise eligible and when we are unable to find any malafide intention on the part of the said Committee to reject the claim of the petitioner, following the above judgments of the Honourable Apex Court, we hold that the interference of this Court into such selection process adopted by the expert body is uncalled for since it is completely within the domain of the said expert body to arrive at the conclusion that whether a candidate possessing Ph.D in Fishery Microbiology (like the petitioner) or even a person possessing Ph.D. in Aquaculture (like the third respondent) could be appointed as Associate Professor (Fish Processing Technology) by relaxing the conditions, since he is otherwise eligible, and this Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India cannot act like a super expert over the decision of an expert body.

21. It has been brought to the notice of this Court that for the unauthorised absence of the petitioner, when the University has contemplated disciplinary proceedings, the writ petitioner filed W.P.No.14562 of 1992 before this Court and a learned single Judge of this Court, by the order dated 13.9.1996, considering all the facts and circumstances of the case had altered the proposed punishment of stoppage of two increments with cumulative effect to one of stoppage of increments without cumulative effect for a period of three years and directed the University to impose the said punishment, further directing the writ petitioner to take note of the warning given by the Court for his future conducts. WMP.No.7250 of 1996 filed by the petitioner seeking to consider his name for promotion to the higher post of Senior Assistant Professor and WMP.No.12100 of 1996 for a direction to the University to interview the petitioner for the selection and appointment as Associate Professor (Fish Processing Technology) were also turned down by the learned single Judge, as cannot be granted at that stage. It seems, the above said order of the learned single Judge in W.P.No.14562 of 1992 has become final. Therefore, it is clear that by the time the writ petitioner attended the interview for the post of Associate Professor, the punishment was in operation and hence, there is every reason for the University in not considering the petitioner for the said post of Associate

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Professor. Further more, it is also submitted by the respondents 1 and 2 in their counter that the petitioner was appointed as Associate Professor by the Order in U.S.O.No.60132/RIII/01, Roc.No.4755/RIII/2000, dated 13.3.2002. Therefore, it is clear that after completion of the punishment period and soon after a vacancy arose in the said category, the respondent/University has appointed the petitioner as Associate Professor. In this entire scenario, we do not find any malafide intention or favouritism exhibited on the part of the respondents, as has been falsely alleged on the part of the petitioner.

For all the above reasons, both these appeals are allowed, setting aside the order passed by the learned single Judge. No costs. Consequently, W.A.Nos.1541 of 2006 and 1151 of 2007 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Rao

To

1.The Vice Chancellor,
Chairman-Selection Committee,
Tamil Nadu Veterinary and Animal
Sciences University,
Vepery, Chennai-7.

2.The Registrar,
Tamil Nadu Veterinary and
Animal Sciences University,
Vepery, Chennai-7.

1 cc to M/s. Row and Reddy, Advocate, Sr. 67547
1 cc to Mr.S. Vijayakumar, Advocate, Sr. 67303
2 ccs to Mr.S.Mani, Advocate, SR. 67582 and 67583

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